

The Honorable Thomas S. Zilly



CV 00-01615 #00000017

FILED _____ ENTERED _____
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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILLIAM ROBERT SMITH II,

Plaintiff,

v

OFFICER RUDY GONZALES; SGT. ROLF
TOWNE; NORMAN STAMPER, and CITY
OF SEATTLE,

Defendants

NO C00-1615Z

**DECLARATION OF STEPHEN P.
LARSON IN OPPOSITION TO
PLAINTIFF'S MOTION TO COMPEL**

Stephen P. Larson does hereby declare as follows:

1 I am the attorney of record for the defendants in the above-entitled action. I
make this declaration based on personal knowledge. I am competent to testify to the
matters contained herein.

2 At no time during the pendency of this action has plaintiff or his attorney even
served interrogatories or requests for production on the City of Seattle. At no time has the
City of Seattle or former Chief Stamper ever failed to respond to any interrogatories or
requests for production.

3 On behalf of defendants Gonzales and Towne, responses to interrogatories
and requests for production, and valid objections thereto were served on the plaintiff's

DECLARATION OF
STEPHEN P. LARSON - 1

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ATTORNEYS
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17

1 attorney Copies of the relevant requests and objections are attached hereto as Exhibits 3
2 through 6.

3 4. Attached hereto and marked Exhibit 1 is a copy of my letter to Mr. Kannin
4 dated October 22, 2001, which was both hand-delivered and faxed to Mr. Kannin. In that
5 letter, I advised Mr. Kannin that his motion to compel did not have any declaration attached
6 to it. In a phone conversation on October 25, 2001, Mr. Kannin told me he had not even
7 drafted a declaration. This letter also formally notified Mr. Kannin that the City of Seattle
8 formally objected to his Rule 30(b)(6) deposition notices and his failure to properly serve a
9 Rule 34 request for production. To this date, neither Mr. Kannin nor his client have served
10 the City of Seattle with a request for production pursuant to Rule 34. Such a request for
11 production would be untimely pursuant to the court's scheduling order, the first page of
12 which is attached hereto as Exhibit 2. That scheduling order references that all motions
13 related to discovery must be filed by September 28, 2001 and that all discovery must be
14 completed by October 28m 2001. Plaintiff has not complied with that order.

15 5. Attached hereto as Exhibit 7 and Exhibit 8 are excerpts from the depositions
16 of Sgt. Towne and Det. Gonzales (respectively) wherein the objection to the subpoena
17 duces tecum was set forth on the record. At no time prior to or following those depositions
18 has Mr. Kannin or Mr. Smith ever served on Det. Gonzales or Sgt. Towne a request for
19 production pursuant to Rule 34.

20 6. At no time prior to the filing of the motion to compel on or about October 19,
21 2001 has Mr. Kannin ever discussed with me the specifics of his request for production, my
22 objections thereto, the officer's objections thereto, or his concerns regarding the objections.
23 The first time Mr. Kannin attempted to discuss those matters with me, was in a telephone
24 call late on Friday, November 2, 2001. Prior to that telephone call, I had advised Mr
25
26

DECLARATION OF
STEPHEN P. LARSON - 2

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1 Kannin that I was in trial, and I am currently in trial, before the Honorable Barbara
2 Rothstein.

3 7 For the first time, I received the Declaration of John J Kannin on November
4 2, 2001. It was faxed and served on my offices shortly before the office closed at 5 00 p m
5 The Declaration of John Kannin that was served on our office contains only attachments
6 Exhibits 7 and 8. It does not contain Exhibits 1 through 6.

7 8 As previously stated, no discovery requests have ever been served on the
8 City of Seattle and therefore inclusion of the City in the motion to compel is not proper

9 9. On or about October 22, 2001, I received Rule 30(b)(6) deposition notices
10 with attached subpoena duces tecum addressed to the City of Seattle Discovery officially
11 closed on October 28, 2001 Under Rule 34, the City of Seattle, as a party defendant, is
12 entitled to a service of a request for production pursuant to Rule 34, not Rule 45, and thirty
13 days to respond thereto The discovery period officially closed after one week after service
14 of the subpoena duces tecum in question. Therefore, even if a Rule 34 request to produce
15 had been served, it would not have been timely.

16 10. Defendants ask the court to quash the subpoena duces tecum addressed to
17 the City of Seattle as improper.

18 DATED at Seattle, Washington this 5th day of November, 2001.

19
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21 By: 

22 Stephen P. Larson
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DECLARATION OF
STEPHEN P LARSON - 3

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1
2 STATE OF WASHINGTON
3 COUNTY OF KING } SS.

4
5 SUBSCRIBED AND SWORN TO before me this 5th day of November, 2001



Velma Farrar
Notary Signature
Print name. Velma Farrar
NOTARY PUBLIC in and for the State of
Washington, residing at Bremerton
My appointment expires. 02-01-04

DECLARATION OF
STEPHEN P. LARSON - 4

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EXHIBIT 1

J WILLIAM ASHBAUGH
SCOTT D BISSELL
MICHAEL C BOLASINA
ANNE M BREMNER
THERON A BUCK
HEATHER L CARR
TOBIN E DALE
BLAKE EDWARD DIAS
A RICHARD DYKSTRA
SCOTT D FLETCHER
THOMAS D FREY
KENNETH HOBBS
STEPHEN P LARSON
LISA M MARCHESE

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MARCUS B NASH
WILLIAM L NEAL
DAVID J ONSAGER
JOHN E D POWELL
JAMES W TALBOT
PHILLIP L THOM
KIM M. TRAN
JAMES P WAGNER
JAMES T YAND

OF COUNSEL
RONALD S BEMIS
JOHN G COOPER
SHANNON STAFFORD

October 22, 2001

Via Facsimile & Hand-Delivered

John J Kannin, Esq
3701 East Garfield Street
Seattle, WA 98112

Re: 1 Smuth II v. City of Seattle, et al.
U.S. District Court No C00-1615
(Our File No. 3019/21603)

Dear Mr Kannin

I received your motion which references a declaration; however, there was no such declaration attached. The only thing I received was the motion itself, which is three pages long. If there is more to the motion, or if there are in fact attachments, they have not been served upon this office.

I also received your Rule 30(b)(6) deposition notices, on less than minimum notice. I will make every attempt to have someone designated for the two depositions you have noticed, however, I am hereby putting you on notice of our objection to the subpoena duces tecum. Since your notices are to a party, the City of Seattle, any request for production of documents is governed by Rule 34 and is therefore not proper through a subpoena duces tecum, which does not replace a Rule 34 request for production.

John J. Kannin, Esq.

October 22, 2001

Page 2

I have noted up your client's deposition for Monday, October 29, 2001 at 9:30 a.m. here in my offices. Please advise if there is a scheduling problem.

Very truly yours,

STAFFORD FREY COOPER

Stephen P. Larson

SPL:sp
Enclosure

EXHIBIT 2

FILED ENTERED
LOGGED RECEIVED

DEC 22 2000

AT SEATTLE
CLERK U.S. DISTRICT COURT
BY WESTERN DISTRICT OF WASHINGTON DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILLIAM ROBERT SMITH II,

Plaintiff(s),

v.

OFFICER R. GONZALES, et al.,

Defendant(s).

Case No. C00-1615Z

MINUTE ORDER SETTING TRIAL
DATE & RELATED DATES

TRIAL DATE

FEBRUARY 25, 2002

Deadline for joining additional parties

March 1, 2001

Disclosure of expert testimony under FRCP 26(a)(2)

August 29, 2001

All motions related to discovery must be filed by
and noted on the motion calendar no later than the
third Friday thereafter (see CR7(d))

September 28, 2001

Discovery completed by

October 28, 2001

All dispositive motions must be filed by
and noted on the motion calendar no later than the
fourth Friday thereafter (see CR 7(d))

November 27, 2001

Settlement conference per CR 39.1(c)(2) held no later than

December 27, 2001

Mediation per CR 39.1(c)(3) held no later than

January 26, 2002

All motions in limine must be filed by
and noted on the motion calendar no later than the
second Friday thereafter

January 28, 2002

Agreed pretrial order due

February 13, 2002

13

ORDER SETTING TRIAL DATE & RELATED DATES - 1

EXHIBIT 3

1 REQUEST FOR PRODUCTION NO. 3: Produce any and all documents, which are in
2 your possession concerning the incident described in the Compliant. This includes, but
3 is not limited to:

- 4 (a) any and all reports or forms describing any aspect of these events;
5 (b) any and all incident reports,
6 (c) any and all tickets or citations, and
7 (d) statements and/or interviews of witnesses, informants, the plaintiff, and any
8 police officers or other persons who had any role or contact with the case.

9 RESPONSE:
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13 REQUEST FOR PRODUCTION NO. 4: Produce any and all documents that comprise
14 or are part of your personnel file, including the disciplinary record, and any other
15 documents concerning your hiring, training, duties, performance, assignments, and
16 mental and physical condition.

17 RESPONSE:
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1 REQUEST FOR PRODUCTION NO. 5 Produce any and all documents concerning or
2 at all relevant to any formal or informal complaint made against you or about you, from
any source, this includes, but is not limited to.

- 3 (a) documents concerning all complaints and other disciplinary or police review of
activities by the Internal Affairs Bureau of the Seattle Police Department,
4 (b) the complete documents concerning each incident listed on your disciplinary
record;
5 (c) the complete documents concerning all complaints and other disciplinary or
6 internal police review of activities maintained by the Seattle Police Department,
and
7 (d) all information contained in the computers maintained by the Internal Affairs
8 Bureau of the Seattle Police Department or any other division of the Seattle
Police Department, including but not limited to the information which is
9 retrievable by computer codes or instructions

10 RESPONSE
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1 REQUEST FOR PRODUCTION NO 6. For the period January 1, 1993 to the current
2 date, produce any and all documents which are in your possession and relevant to this
3 incident, including, but not limited to, guidelines, directives, policy statements,
4 procedures and training materials, in any form and of any type, concerning Seattle
5 Police Department policy, custom or practice regarding

- 6 (a) discipline of officers generally,
- 7 (b) specific discipline for the violation of constitutional rights,
- 8 (c) the procedure for stopping, questioning, and arresting suspects;
- 9 (d) the procedure for deploying or using the ARWEN Anti-Riot weapon,
- 10 (e) the procedure for investigating other police officer's reports of suspicious
11 persons,
- 12 (f) the procedure for stopping suspects believed to be carrying deadly weapons,
- 13 (g) the procedure for reporting use of force up the chain of command at the Seattle
14 Police Department.

15 RESPONSE

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20 REQUEST FOR PRODUCTION NO. 7 Produce any and all documents that comprise a
21 file, dossier, or record that names or otherwise references the plaintiff William R Smith
22 II, including documents, photos, and any other record maintained by the Seattle Police
23 Department pertaining to Mr Smith

24 RESPONSE

1 REQUEST FOR PRODUCTION NO 8 For the period January 1, 1993 to the current
2 date, produce any and all documents which are in your possession and describe the
use of less than lethal weapons, including:

- 3 (a) guidelines for using and maintaining less than lethal weapons;
4 (b) guidelines for using and maintaining the ARWEN anti-riot weapon,
5 (c) training manual for the ARWEN anti-riot weapon,
6 (d) the Seattle Police Department use of force continuum(s) for the above
referenced period,
7 (e) any certifications or licenses you hold that show your competency in using or
authorization to use any weapon

8 RESPONSE
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EXHIBIT 4

1 Response to Interrogatory No. 28: Yes This includes the Washington State Criminal
2 Justice Training Academy, the Seattle Police Department Manual, updates including the
3 General Information Bulletins and Law Enforcement Digest, and materials for studying for
4 examinations. Such material is periodically given to officers during the course of their duties.

5 Response to Interrogatory No. 29: Graduated high school and attended two years of
6 Everett Community College studying criminal justice.

7 Response to Interrogatory No. 30: Objection: not relevant, not material, privileged,
8 confidential, not reasonably calculated to lead to the discovery of admissible evidence, an
9 invasion of privacy, and not within the proper scope of discovery.

10 Response to Interrogatory No. 31: Not to Detective Gonzales' knowledge.

11 Response to Interrogatory No. 32: See attached.

12 Response to Interrogatory No. 33: Objection: not material, not relevant, not
13 reasonably calculated to lead to the discovery of admissible evidence, privileged, confidential,
14 an invasion of privacy, and not a proper subject of the scope of discovery in this case.

15 Response to Interrogatory No. 34: This is a repeat of Interrogatory No. 7. See prior
16 answer. No decision on use of expert witnesses has been made.

17 Response to Request for Production No. 3. See attached.

18 Response to Request for Production No. 4: Objection. not relevant, not material, not
19 reasonably calculated to lead to the discovery of admissible evidence, privileged, confidential,
20 and an unreasonable invasion of privacy. These materials are not within the care, custody, or
21 control of Detective Gonzales.

22 Response to Request for Production No. 5: Objection: not relevant, not material, not
23 reasonably calculated to lead to the discovery of admissible evidence, privileged, confidential,
24 and an invasion of privacy. If any such responsive materials exist at all, none is within the
25 care, custody, or control of Detective Gonzales.

26 Response to Request for Production No. 6: A copy of the Seattle Police Department
Manual is available for inspection and review in the Seattle Public Library and the Office of the
Chief of Police. In addition, a copy is available for review upon reasonable notice and prior
arrangement at the office of Detective Gonzales' attorneys.

Response to Request for Production No. 7: Other than those documents already
attached, Detective Gonzales is not aware of any others.

RESPONSES OF DEFENDANT RUDY P. GONZALES TO
PLAINTIFF'S FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION - 6

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RESPONSES AND OBJECTIONS TO INTERROGATORIES AND REQUESTS FOR PRODUCTION DATED this 23 day of April, 2001

STAFFORD FREY COOPER
Professional Corporation

By: Stephen P. Larson, WSBA #4959
Attorneys for Defendants

STAFFORD FREY COOPER
Professional Corporation
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TELEPHONE (206) 623-9900

EXHIBIT 5

1 REQUEST FOR PRODUCTION NO 3 Produce any and all documents, which are in
2 your possession concerning the incident described in the Compliant This includes, but
3 is not limited to

- 4 (a) any and all reports or forms describing any aspect of these events,
- 5 (b) any and all incident reports,
- 6 (c) any and all tickets or citations; and
- 7 (d) statements and/or interviews of witnesses, informants, the plaintiff, and any
8 police officers or other persons who had any role or contract with the case

9 RESPONSE

10 REQUEST FOR PRODUCTION NO 4 Produce any and all documents that comprise
11 or are part of your personnel file, including the disciplinary record, and any other
12 documents concerning your hiring, training, duties, performance, assignments, and
13 mental and physical condition

14 RESPONSE

1 REQUEST FOR PRODUCTION NO. 5: Produce any and all documents concerning or
2 at all relevant to any formal or informal complaint made against you or about you, from
any source, this includes, but is not limited to:

- 3 (a) documents concerning all complaints and other disciplinary or police review of
activities by the Internal Affairs Bureau of the Seattle Police Department;
- 4 (b) the complete documents concerning each incident listed on your disciplinary
record;
- 5 (c) the complete documents concerning all complaints and other disciplinary or
6 internal police review of activities maintained by the Seattle Police Department,
and
- 7 (d) all information contained in the computers maintained by the Internal Affairs
8 Bureau of the Seattle Police Department or any other division of the Seattle
Police Department, including but not limited to the information which is
9 retrievable by computer codes or instructions.

10 RESPONSE
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1 REQUEST FOR PRODUCTION NO 6: For the period January 1, 1993 to the current
2 date, produce any and all documents which are in your possession and relevant to this
3 incident, including, but not limited to, guidelines, directives, policy statements,
4 procedures and training materials, in any form and of any type, concerning Seattle
5 Police Department policy, custom or practice regarding

6 (a) discipline of officers generally;

7 (b) specific discipline for the violation of constitutional rights,

8 (c) the procedure for stopping, questioning, and arresting suspects,

9 (d) the procedure for deploying or using the ARWEN Anti-Riot weapon;

10 (e) the procedure for investigating other police officer's reports of suspicious
11 persons,

12 (f) the procedure for stopping suspects believed to be carrying deadly weapons,

13 (g) the procedure for reporting use of force up the chain of command at the Seattle
14 Police Department

15 RESPONSE.

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20 REQUEST FOR PRODUCTION NO 7 Produce any and all documents that comprise a
21 file, dossier, or record that names or otherwise references the plaintiff William R Smith
22 II, including documents, photos, and any other record maintained by the Seattle Police
23 Department pertaining to Mr. Smith.

24 RESPONSE

1 REQUEST FOR PRODUCTION NO 8 For the period January 1, 1993 to the current
2 date, produce any and all documents which are in your possession and describe the
3 use of less than lethal weapons, including

- 4 (a) guidelines for using and maintaining less than lethal weapons;
- 5 (b) guidelines for using and maintaining the ARWEN anti-riot weapon,
- 6 (c) training manual for the ARWEN anti-riot weapon,
- 7 (d) the Seattle Police Department use of force continuum(s) for the above
8 referenced period,
- 9 (e) any certifications or licenses you hold that show your competency in using or
10 authorization to use any weapon

11 RESPONSE
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PLAINTIFF'S FIRST SET OF INTERROGATORIES & REQUESTS FOR PRODUCTION TO
DEFENDANT R TOWNE - Page 30

EXHIBIT 6

1 may be asked questions concerning their expertise in the use of various weapons and less-
 2 than-lethal force. It is possible that others knowledgeable in the use of the Arwen will be
 3 contacted, if needed.

4 Response to Request for Production No. 3: See reports and documents attached to
 5 the responses to Interrogatories by Detective Gonzales, additional copies of which are
 6 attached hereto.

7 Response to Request for Production No. 4: Objection: not relevant, not material, not
 8 reasonably calculated to lead to the discovery of admissible evidence, privileged, confidential,
 9 and an unreasonable invasion of privacy. These materials are not within the care, custody, or
 10 control of Sergeant Towne.

11 Response to Request for Production No. 5: Objection: not relevant, not material, not
 12 reasonably calculated to lead to the discovery of admissible evidence, privileged, confidential,
 13 and an invasion of privacy, not a proper subject of discovery under the facts of this case. If
 14 any such responsive material exists, at all, none is within the care, custody, or control of
 15 Sergeant Towne

16 Response to Request for Production No. 6: A copy of the Seattle Police Department
 17 Manual is available for inspection and review in the Seattle Public Library, the Office of the
 18 Chief of Police, and a copy is available for review upon reasonable notice and prior
 19 arrangement at the office of Sergeant Towne's attorneys.

20 Response to Request for Production No. 7: Other than those documents already
 21 attached, Sergeant Towne is not aware of any others.

22 Response to Request for Production No. 8: To the best of the present ability of
 23 Sergeant Towne to determine, a copy of the Arwen Maintenance Manual and Illustrated Parts
 24 List is available for inspection at the offices of Sergeant Towne's attorney upon reasonable
 25 notification and prior arrangement. The use of force continuum is described in the Seattle
 26 Police Department Manual.

RESPONSES AND OBJECTIONS TO INTERROGATORIES AND REQUESTS FOR
 PRODUCTION DATED this 23 day of April, 2001.

STAFFORD FREY COOPER
 Professional Corporation

By: 
 Stephen P. Larson, WSBA #4959
 Attorneys for Defendants

RESPONSES OF DEFENDANT ROLF W. TOWNE TO
 PLAINTIFF'S FIRST SET OF INTERROGATORIES AND
 REQUESTS FOR PRODUCTION - 6

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EXHIBIT 7

1 A. None that I can think of right now.

2 Q. And are you aware that you're here because of
3 civil lawsuit entitled William R. Smith, versus the City
4 of Seattle, short title, generally you're aware of that
5 the reason why you're here?

6 A. I am now, yeah.

7 Q. And were you aware of that before today?

8 A. I understood it was with Mr. Smith, but you are
9 the first that actually has told me the actual -- the
10 title of it, as well as the -- the reasons.

11 Q. And earlier I had submitted these formal
12 notices informing you of the deposition today. I
13 submitted them to Mr. Stephenson (sic), your attorney,
14 excuse me, Mr. Larson, your attorney.

15 And one of the documents I gave to him
16 was something called subpoena duces tecum, in that
17 document I asked you to bring some records to the
18 deposition. Were you able to bring those records?

19 MR. LARSON: Before you answer the
20 question I'm going to interject, here, an objection.
21 First of all, you served that subpoena on me during the
22 week that you knew I was gone, because I told you I
23 would be gone.

24 Second, since Sergeant Towne is a
25 party the subpoena is, in reality, a request for

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1 production under rule 34 that he's entitled to 30 days
2 to respond to. So, we object to the subpoena duces
3 tecum.

4 Next, and without waiving any other
5 objection, all the items that you've listed in there,
6 which are numerous, are items that are not within
7 Sergeant Towne's care, custody or control.

8 So, the answer to your question is the
9 Sergeant has nothing with him today.

10 MR. KANNIN: Okay, nothing with him
11 today. Then what I would like to do for the record we'll
12 go through this list today and then resubmit it to
13 Officer Towne's attorneys and you can respond to instead
14 of by way of a subpoena duces tecum then respond to it
15 by way of a request for production, but to clarify my
16 ongoing discovery requests I'll ask you these questions,
17 Officer Towne.

18 BY MR. KANNIN:

19 Q. Do you have any documents that in any way
20 relate to the shooting incident of William R. Smith that
21 occurred on December 5th, 1998?

22 A. Shooting incident?

23 Q. Yes, sir.

24 A. Would you clarify that for me? Are you talking
25 about the application of the less lethal?

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1 Q. Yes.

2 A. Okay. I don't have anything.

3 Q. And you're -- for the record -- you're stating
4 that Mr. Smith was not shot on December 5th, 1998?

5 A. Well, there's different explanations for being
6 shot. I mean, there's a lethal application, and then
7 less lethal, which was applied that night.

8 Q. So he was shot with a less lethal weapon?

9 A. He was, yes. He was hit with a high energy
10 impact baton.

11 Q. And whether you call it hit with that -- so it
12 is a weapon; correct?

13 A. Well, there's so many different definitions for
14 weapon, but yes, it's a launcher is what we typically
15 describe them within our realm of use.

16 Q. Okay. We're going to get into all of that, but
17 what I would like to clarify before we get into your
18 weapons is, once again, the documents.

19 So, regarding the shooting incident
20 with the ARWEN, I believe it was called an ARWEN 37
21 millimeter, and you say that it's something other than a
22 weapon, we're calling it the weapon, and on that day,
23 December 5th, 1998, are you aware that one of the
24 officers of the Seattle Police Department pointed, aimed
25 and shot the weapon at Mr. Smith?

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1 A. I was present when that happened, yes. I'm
2 aware of it.

3 Q. And regarding that incident do you have any
4 documents in your possession that relate in any way to
5 that incident?

6 A. I don't have any in my possession right now.

7 Q. Does the Seattle Police Department have any?

8 A. I would have to assume that they're in the
9 records.

10 Q. And that's a department in the Seattle Police
11 Department, the records department?

12 A. That's correct.

13 Q. Did you create any documents?

14 A. I don't recall, myself, creating any documents
15 that evening. It's possible, I just don't have the
16 memory. I do recall signing some documents subsequent to
17 the encounter with Mr. Smith.

18 Q. How about documents relating to you, personally,
19 has there ever been a report or any document that we
20 could consider a complaint or disciplinary type of action
21 documented against you in your career with the Seattle
22 Police Department?

23 MR. LARSON: Don't answer that.

24 Objection to that question, that is a matter which is
25 privileged, confidential, not reasonably calculated to

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1 lead to the discovery of admissible evidence.

2 I've made this objection in writing to
3 you, before. It's an invasion of privacy. It's not
4 relevant and it's not governed -- it's not -- he's not
5 going to answer your question. It's improper.

6 MR. KANNIN: Okay. You can go ahead
7 and answer the question.

8 MR. LARSON: No, he's not going to
9 answer that question. I just told you that.

10 MR. KANNIN: We'll go off the record
11 now.

12 (Whereupon, a discussion was held off
13 the record.)

14 MR. KANNIN: Can we go back on the
15 record. Continuing on, after my question, we'll continue
16 the deposition.

17 Mr. Larson has objected invoking a
18 privilege citing Mendez V. City of Stockton as his basis.
19 The plaintiff objects to this objection, and without
20 waiving any further objections to the admissibility of
21 that evidence and that question at this deposition, and
22 in the spirit of continuing on and getting through this,
23 we'll continue with our questions today.

24 BY MR. KANNIN:

25 Q. Now, Officer Towne, do you have any of your

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EXHIBIT 8

1 if you want to take a break at any time let me know and
2 we'll take a break.

3 A. Okay.

4 Q. And, preliminarily, the deposition was set by
5 way of notice of deposition, and I sent the notice to
6 your attorney, Mr. Larson, along with another document, a
7 subpoena duces tecum for certain records that I asked to
8 be brought to the deposition. Did you go over that
9 request for records with your attorney?

10 MR. LARSON: I'm going to interpose an
11 objection, here. We've talked about this earlier this
12 morning. The objection is the same.

13 MR. KANNIN: That's fine. To preserve
14 my requests for the records I'm going to ask you for the
15 records and if you want to make a standing objection to
16 all my requests I'm going to just ask for them. And he
17 can object and we'll get on with it, here.

18 BY MR. KANNIN:

19 Q. The files and records that you have in your
20 possession relating to the incident that occurred on
21 December 5th, 1998, do you have any of those documents
22 in your possession?

23 A. In my immediate possession or --

24 Q. Anywhere, at home, at your office.

25 A. Yes.

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1 Q. And -- but you did not bring them with you
2 today?

3 A. No, I do not have them.

4 Q. How about any documents or reports that were
5 made naming you with a complaint or disciplinary review
6 created by the Seattle Police Department; do you have any
7 documents like that?

8 MR. LARSON: We'll object to that
9 question. The objection was stated this morning, but it's
10 not a proper question, it's subject to a number of
11 different privileges, and it's not relevant, it's not
12 material, it's not reasonably calculated to lead to the
13 discovery of admissible evidence and under the guidelines
14 as laid down in the Ninth Circuit it's not discoverable.

15 BY MR. KANNIN:

16 Q. Do you have any of those documents in your
17 possession?

18 A. Yes.

19 Q. The next set of documents I asked for are
20 documents in your possession or the Seattle Police
21 Department's that specifies guidelines, directives,
22 policies and procedures or training manuals of any type
23 or form concerning the Seattle Police Department's
24 policies, custom or practice on how to make an arrest,
25 how to arrest a suspect with the least amount of danger

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1 posed to you, how to arrest a suspect with the least
2 amount of danger posed to the suspect, and procedures for
3 using force against a suspect. Do you have any
4 documents like that?

5 A. I have a manual that was issued to me by the
6 Seattle Police Department that has since been updated
7 where I have received an updated Seattle Police
8 Department manual of procedures and policies. Those are
9 the types of manuals I keep in my personal review.

10 Q. Do you keep those in your office or your home?

11 A. I have them in my office.

12 Q. And where is your office?

13 A. The address I provided to the clerk, on the
14 East Precinct, the Second Floor.

15 Q. How about procedures for using or deploying the
16 ARWEN anti-riot weapon, do you have any documents
17 pertaining to that?

18 A. I have old documents that I had during the time
19 I was with the SWAT team. Whether or not they have been
20 revised or updated since my departure two and a half
21 years ago, but at the time that I was using that weapon
22 or was authorized to use that weapon I did have manuals
23 on how to deploy that weapon, and I still do have those
24 manuals, but not have reviewed them since departing from
25 the SWAT team.

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1 Q. Do you have any of your performance evaluations
2 that were done by your supervisors or by the Seattle
3 Police Department?

4 A. No, I do not.

5 Q. Are there -- do you have written performance
6 reviews, there?

7 A. With the Seattle Police Department?

8 Q. Yes.

9 A. Yes, sir.

10 Q. And who keeps copies of those?

11 A. Personnel department, I'm guessing, I'm -- I'm
12 pretty certain that might be accurate, but I'm not a
13 hundred percent certain.

14 Q. You don't keep copies of those?

15 A. No, I do not.

16 Q. How about any documents that describe how to
17 deploy less than lethal weapons generally, not just the
18 ARWEN, but any sort of less than lethal weapon, books,
19 manuals; do you have anything like that?

20 A. The police department provides directives,
21 updated policies on the -- the use of less lethal type
22 equipment that is provided for its officers. I do not
23 personally, my own personal records, keep a copy of
24 those, but those are provided and are in each precinct
25 should an officer want to review them. So they're

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